



Funding Systems Railcars, Inc.

TRI-STATE CENTER • SUITE 370 • 2215 SANDERS RD. • NORTHBROOK, IL 60062 • (312) 272-8350

20 May 1982

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. **13648**
MAY 24 1982 -3 30 PM
INTERSTATE COMMERCE COMMISSION

2-144A164

No. **MAY 24 1982**
Date **50.00**
Fee \$ **50.00**
ICC Washington, D. C.

Dear Madam:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one counterpart of Railcar Lease Agreement, a primary document, dated March 24, 1982.

The names and addresses of the parties to the enclosed document are:

Lessor: Funding Systems Railcars, Inc.
Tri-State Center, Suite 370
2215 Sanders Road
Northbrook, IL 60062

Lessee: Blue Diamond Mining, Inc.
6305 Kingston Pike
Knoxville, TN 37919

A general description of the railroad equipment covered by the enclosed document is as follows:

Nine (9) 3570 cu. ft. 100-ton open top hopper cars bearing reporting mark and numbers BDMX 170 through BDMX 178 inclusive.

The original and all extra copies of the enclosed document should be returned to Ms. Sharon Schumacher of Funding Systems Railcars, Inc., 2215 Sanders Road, Suite 370, Northbrook, Illinois 60062.

Also enclosed is a remittance in the amount of \$50.00 in payment of recordation fees.

I am an officer of Funding Systems Railcars, Inc., and have knowledge of the matters set forth herein.

Very truly yours,

Funding Systems Railcars, Inc.

By *Dennis T. Hurst*
Dennis T. Hurst

RECEIVED
MAY 24 3 25 PM '82
FEE OPERATING BR.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Ms. Sharon Schumacher
Funding Systems Railcars, Inc.
2215 Sanders Road
Suite 370
Northbrook, Illinois 60062

May 24, 1982

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/24/82 at 3:30PM, and assigned re-recording number(s). 13648

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 13648
MAY 24 1982 - 3 50 PM
INTERSTATE COMMERCE COMMISSION

RAILCAR LEASE AGREEMENT

DATED AS OF MARCH 24, 1982

BETWEEN

FUNDING SYSTEMS RAILCARS, INC. ("LESSOR")

AND

BLUE DIAMOND MINING, INC. ("LESSEE")

RAILCAR LEASE AGREEMENT

THIS RAILCAR LEASE AGREEMENT (the "Agreement"), dated as of March 24, 1982 by and between FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation, with a principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 (hereinafter called "Lessor") and BLUE DIAMOND MINING, INC. a Delaware corporation, with a principal place of business at 6305 Kingston Pike, Knoxville, Tennessee 37919 (hereinafter called "Lessee").

Section 1: Scope of Agreement

Subject to the terms and conditions hereof, Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and lease, the railroad cars (being hereinafter collectively referred to as the "Cars" and separately as a "Car") covered by Schedule No. 1 attached hereto and such additional schedules as may be added from time to time by agreement of the parties (collectively hereinafter referred to as the "Schedules"), and any and all other cars delivered to and accepted by Lessee. Each such schedule shall set forth the number of Cars, the rental rate, the lease term, the Car numbers, and such other pertinent information desired by both parties. All Cars leased pursuant to such Schedules, or otherwise delivered to and accepted by Lessee pursuant hereto, are subject to the terms of this Agreement, including those terms set forth in Schedule No. 1 attached hereto and made a part hereof.

Section 2: Delivery and Acceptance Provisions

2.1 Lessor agrees to deliver the Cars to Lessee as promptly as reasonably possible to the point or points designated in the applicable Schedule, at the sole cost and expense of Lessor. Lessor's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to (and Lessor shall not be responsible for) failure to deliver, or delays in delivering, Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Lessor's control. From and after the date a Car becomes subject to this Agreement, Lessee shall be liable for, and shall pay or reimburse Lessor for, the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car.

2.2 Each of the Cars shall be subject to Lessee's inspection upon delivery to Lessee. Lessee shall be responsible for determining that the Cars are in proper condition for loading and shipment. Failure to report any defect in a Car within ten (10) days after (i) delivery of a Car to Lessee or (ii) loading of a Car by Lessee or at its direction, whichever occurs first, shall constitute acceptance of the Car by Lessee for lease in accordance with the terms and conditions of this Agreement and shall be conclusive evidence of the fit and suitable condition of the Car in all respects, including for loading and transporting commodities then and thereafter loaded therein or thereon. At Lessor's request, Lessee shall deliver to Lessor an executed Certificate of Acceptance in the form of Exhibit A with respect to all such Cars.

Section 3: Possession and Use

3.1 Throughout the term of this Agreement as long as Lessee is not in default hereunder, Lessee shall be entitled to possession, use and quiet enjoyment of each Car in accordance with the terms of this Agreement from the date the Agreement becomes effective as to such Car; provided, however, that Lessee agrees that the Cars shall at all times be used (i) exclusively in Lessee's own service, (ii) in conformity with the Interchange Rules; (iii) in compliance with the terms and provisions of this Agreement; (iv) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (v) only within the continental limits of the United States of America and (vi) in such service as will not constitute a "unit train". The term "Interchange Rules" shall mean all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission ("ICC") and the United States Department of Transportation ("DOT"), which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders. During the term of this Agreement, Lessor reserves the right to substitute any or all of the Cars with similar or like Cars and the rental in respect to the substituted car shall commence upon delivery of the substituted car to Lessee.

EPT
SDH

3.2 It shall be Lessee's sole responsibility to obtain from any railroad all necessary authority to place the Cars in service under the provisions of AAR Circular No. OT-5 as promulgated by the AAR and all supplements thereto and reissues thereof or subsequent directives (such authority hereinafter called the "consent(s)"). Lessor shall not be liable for Lessee's failure to obtain such consents for any reason whatsoever and this Agreement shall remain in full force and effect notwithstanding any failure of Lessee to obtain such consents.

3.3 No right, title or interest in any of the Cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the Cars, except the right to use the Cars in accordance with the terms of this Agreement.

Section 4: Rental Charges

Lessee agrees to pay the rental charge specified in the applicable Schedule with respect to each Car beginning as of the date the Car is placed for loading at the point designated in the applicable Schedule (the "Date of Delivery") through and including the date such Car is returned to and accepted by Lessor. Such rental charge shall be paid, in immediately available funds, to Lessor at its office, 2215 Sanders Road, Northbrook, Illinois 60062 or at such other address as may be designated by Lessor in writing, ~~in advance on the first day of each month,~~ ^{monthly in arrears} prorating, however, any period which is less than a full month. Except as otherwise provided herein, rental payments on any Car shall not abate for any reason whatsoever.

Section 5: Lease Term

This Agreement shall be effective as to any Car on the Date of Forwarding of such Car. With respect to all Cars delivered under a particular Schedule, the lease term shall commence on the Average Date of Delivery and shall terminate upon expiration of the lease term specified in the applicable Schedule, unless sooner terminated in accordance with the provisions of this Agreement or hereinafter extended by mutual agreement of the parties hereto. The "Average Date of Delivery" shall mean that date which is determined by (i) multiplying the number of Cars which becomes subject to this Agreement forwarded by Lessor on each date by the number of days elapsed between such day and the date of forwarding of the first Car under the applicable Schedule which becomes subject to this Agreement, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule which becomes subject to this Agreement and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery (forwarding) of the first Car under the applicable Schedule which becomes subject to this Agreement.

Section 6: Railroad Markings-Mileage Collection-Mileage Equalization

6.1 Lessor agrees that on or before delivery of the Cars to Lessee, the Cars will be lettered with the markings of Lessee and the name and/or other insignia used by Lessee, at the expense of Lessee. Such name or insignia shall comply with all applicable regulations. Lessee will not alter any marking on any Car without the prior written consent of Lessor.

6.2 Lessor shall, at no cost to Lessee, prepare all documents for filing relating to the registration, maintenance and record keeping functions with respect to the Cars and shall perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR interchange agreements. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Cars, (ii) registration for the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register, directing that correspondence from railroads using such Cars shall be addressed to Lessee; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Cars.

6.3 Lessee agrees to reimburse Lessor for any payment Lessor may be required to make to any railroad, due to mileage equalization where applicable, resulting from excess empty mileage incurred by the Cars on such railroad. For the purpose of this Section 6.3 the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. In addition, if Lessor is required to make any payments to a railroad resulting from the empty movement of any of the Cars while they are in Lessee's service, Lessee agrees to reimburse Lessor for such payments within five (5) days after written demand therefor.

~~6.4 Lessor shall collect the mileage charges earned by the Cars, and subject to all rules of the tariffs of the railroads, Lessor shall credit to Lessee's rental account such mileage charges earned as and when received from the railroads (less taxes, other than income taxes due or to become due on account thereof) but in no event shall the aggregate amount of mileage charges credited exceed the aggregate monthly Car rentals for the term of this Agreement. Mileage charge earnings for all Cars covered by this Agreement shall be carried in a consolidated account.~~ EJJ JBN

Section 7: Maintenance

7.1 Except as otherwise hereinafter provided, ^{Lessee} ~~Lessor~~ agrees to pay for the normal and customary maintenance and repair of the Cars. Lessor shall not be responsible to pay for any maintenance or repairs which result from the negligent acts or omissions of Lessee. Lessee shall not ~~repair, or authorize the repair of any of the Cars without Lessor's prior written consent nor shall Lessee~~ make or authorize the making of alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes a ~~repair~~, alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenue lost due to such ~~repair~~, alteration, improvement or addition. EJJ JBN

7.2 Any and all alterations, improvements and additions to any Car made in connection with the requirements of this Agreement or otherwise, including any and all parts installed on and additions and replacements made to any Car, shall constitute accessions to such Car and, at the cost and expense of Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in Lessor.

7.3 Lessee will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Car during the Term of this Agreement, including but not limited to any transportation charges incurred by Lessee to transport each Car to and/or from any contract maintenance facility. Lessee shall be responsible to inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to Lessor for and during the Term of this Agreement of each Car all of its right, title and interest in any warranty in respect to the Car. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessor at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be, to the extent necessary, made payable to Lessor. All proceeds from such recovery shall be used to repair or replace the Cars. Lessor may make or cause to be made such inspections of the Cars as Lessor may deem necessary. Lessor may make all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars.

~~7.4 If any Car becomes unfit for service and shall be held in a car shop for repairs and shall remain therein for a period in excess of five (5) days, the monthly rental with respect to such Car shall abate from and after such period of five (5) days until such Car is released from the shop or until another car shall have been placed in the service of Lessee by Lessor in substitution for such Car. It is understood that no rental credits will be issued for Cars in a shop for repairs arising as a result of the negligent acts or omissions of Lessee, its agents or customers or which result from acts prohibited under this Agreement.~~ JBN EJJ

7.5 In the event the DOT, or any other governmental agency or nongovernmental organization having jurisdiction over the operation, safety or use of railroad equipment, requires that Lessor add, modify or in any manner adjust the Cars subject to this Agreement in order to qualify them for operation in railroad interchange, Lessee agrees to pay an additional monthly charge of \$1.75 per Car for each \$100 expended by Lessor on such Car, effective as of the date the Car is released from the shop after application of such additions, modifications or adjustments (hereinafter referred to as "Modifications"); or Lessee may, at its option, make the necessary modifications. No rental credit will be issued on Cars entering the shop for any Modifications for the first thirty (30) days. In the event Lessor in its sole discretion determines prior to making any Modification that it would not be economical to make such Modification in view of the estimated remaining useful life or condition of such Car, and Lessor elects to permanently remove such Car from Lessee's service rather than have such Modification, the rental with respect to such Car shall terminate upon the date specified in writing by Lessor; provided that such date must be prior to the date the Modification is so required to be made.

Section 8: Damage and Risk of Loss

8.1 Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge of any damage to any of the Cars.

8.2 In the event that any of the Cars, or the fittings, appliances or appurtenances thereto, shall be damaged (ordinary wear and tear excepted) destroyed, lost, stolen or removed as a result of the acts or omissions of Lessee, its agents or customers, or shall be damaged or destroyed as a result of any commodity or other material loaded therein or thereon, Lessee agrees to assume the full financial responsibility for such event and shall replace or pay to Lessor within thirty (30) days after written demand therefor for all losses incurred by Lessor as a result of such damage or destruction. Lessee agrees to assume financial responsibility for any damage to the Cars caused by corrosion or abrasion. Lessee shall be liable for any loss of or damage to any Car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Interchange Rules. In addition, Lessee shall be responsible for, as between, Lessor, Lessor's insurance carrier and Lessee, all third-party personal injury and property damage caused by the use, operation, possession, storage or return of the Cars which results from the acts or omissions of Lessee or its agents.

8.3 In the event any Car is totally damaged or destroyed, the rental with respect to such Car shall terminate upon receipt by Lessor of written notification of date of incidence by the Carrier, unless such damage or destruction was caused by the act or omission of Lessee or its agents in which case the rental shall not terminate until the receipt by Lessor of payment in full of any amount equal to the replacement value of such Car. In the event any Car is reported not to be in satisfactory condition for movement in the normal interchange of rail traffic and Lessor elects to permanently remove such Car from Lessee's service rather than have such Car taken to a car shop for repairs, the rental with respect to such Car shall terminate upon receipt by Lessor of written notification that such Car was not in satisfactory condition for movement in the normal interchange of rail traffic. Lessor shall have the right, but shall not be obligated, to substitute for any such Car another car of the same type and capacity and the rental in respect to such substitute car shall commence upon delivery of such substituted car to Lessee.

8.4 Lessor shall not be liable for any loss of or damage to or in connection with, commodities or any part thereof, loaded or shipped in or on the Cars, and Lessee agrees to assume financial responsibility for, to indemnify and defend Lessor against, and to save it harmless from, any such loss or damage.

Section 9: Liens, Claims and Taxes

9.1 Lessee agrees to indemnify, protect and hold Lessor harmless from and against any loss, liability, claim, damage or expense (including investigation costs, court costs and attorneys' fees) regardless of the cause arising out of or in connection with the use, possession or operation of the Cars during the term of this Agreement, except, however, any loss, liability, claim, damage or expense which accrues with respect to any of the Cars (i) while such Car is in a repair shop undergoing repairs at Lessor's direction and not under Lessee's control; (ii) which is attributable to the gross negligence or willful misconduct of Lessor or its agents; or (iii) for which a railroad or railroads have assumed to the satisfaction of Lessor full responsibility, including investigating and defending against any claim for damages. The indemnities and assumptions of liability herein contained shall survive the termination of this Agreement. Each party shall, upon learning of same, give the other prompt notice of any potential or existing claim or liability hereby indemnified against. The indemnities arising hereunder shall continue in full force and effect notwithstanding the expiration or termination of this Agreement.

9.2 Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by Lessor or resulting from claims against Lessor not related to the ownership of the Cars) upon or with respect to any Car, including any accession thereto, or the interest of Lessor or Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

9.3 Except with respect to all property taxes levied upon the Cars which Lessee agrees to assume responsibility for (including the filing of property tax reports relating thereto) and to pay, Lessee agrees to be responsible for and to pay any applicable local, state, federal or foreign taxes or certification, registration or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment or delivery under the terms of this Agreement (all such expenses, taxes, certification, registration and license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein and from and against which Lessee agrees to indemnify, protect, defend, save and keep harmless on an after-tax basis Lessor; provided, however, that Lessee's obligation to pay impositions shall not include any federal income tax payable by Lessor unless otherwise provided for herein in consequence of the receipt of payments pursuant to this Agreement. Lessee will also pay promptly all impositions that may be imposed upon any Car or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon Lessor by reason of its ownership thereof and will keep at all times all and every part of the Cars free and clear of all impositions that might in any way affect the title of Lessor in and to any Car or its interests or rights under this Agreement. If any impositions shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor within thirty (30) days after demand therefor.

In the event any reports with respect to impositions are required to be made, Lessee will either make such reports in such manner as to show the interest of Lessor in the Cars or notify Lessor of such requirement and will make such reports in such manner as shall be satisfactory to Lessor.

In the event that, during the continuance of this Agreement, Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 9.3, such liability shall continue, notwithstanding the expiration of this Agreement, until all such are paid or reimbursed by Lessee. The obligations of Lessee under this Section 9.3 constitute a rental obligation.

9.4 Lessee shall reimburse Lessor on an after-tax basis within five (5) days after written demand therefor for any custom duties, taxes, unavailability or loss (in whole or in part) of Car ownership tax benefits (including, but not limited to, investment tax credit and depreciation deductions), or other loss, cost or expenses resulting from use, possession or operation of the Cars while subject to this Agreement or under Lessee's control, however, Lessee shall not be responsible for a loss of Lessor's tax benefits caused by Lessor's failure or negligence in complying with the tax code.

9.5 Lessee shall notify Lessor in writing within five (5) days after any attachment, lien or other judicial process shall attach to any Car.

Section 10: Marking and Loading

10.1 No lettering or marking of any kind shall be placed upon any of the Cars by Lessee without the prior written consent of Lessor.

10.2 Lessee agrees not to load any of the Cars in excess of the load limit stenciled thereon, excluding in the event moisture is the cause for exceeding the stenciled load limit.

Section 11: Default and Default Remedies

11.1 The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required hereunder to be paid by Lessee and such default shall continue for ten (10) days after written notice thereto from Lessor.

(ii) Lessee shall make or permit any unauthorized assignment or transfer of this Agreement, or any interest herein, or of the right to possession of the Cars or any thereof;

(iii) The default by Lessee in the observance or performance of any other term, covenant, or condition of this Agreement which is not cured within ten (10) days after written notice thereof from Lessor.

(iv) Any representation or warranty made by Lessee herein or in any statement or certificate furnished to Lessor pursuant to or in connection with this Agreement is untrue in any material respect as of the date of issuance or making thereof or, if such representation or warranty shall be continuing, shall become inaccurate in any material respect;

(v) Any proceeding shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier or Lessee shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;

(vi) Any representation or warranty made by Lessee in this Agreement or other document delivered by Lessee pursuant thereto, shall be false or misleading in any material respect as of the date made.

(vii) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs Lessee's capacity to perform its obligations under this Agreement.

11.2 Upon the occurrence of any Event of Default:

(i) Lessor at its option may:

(a) terminate this Agreement by written notice to such effect, and repossess the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating this Agreement repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including court costs and reasonable attorneys' fees) of repossessing and reletting of the Cars and delivery to the new Lessee and then to the payment of rent due under this Agreement. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of this Agreement and the repossessing of the Cars.

The remedies provided in this Section 11.2 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in Lessor's favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

any court or governmental instrumentality, or of the corporate charter (as amended) or the by-laws (as amended) of Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Lessee is now a party or by which it may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(v) No mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of Lessee, now attaches or hereafter will attach to the Cars or in any manner affects or will affect adversely Lessor's right, title and interest therein;

(vi) No authorization or approval is required from any governmental or public body with respect to the entering into or performance by Lessee of this Agreement;

(vii) This Agreement has been duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery thereof by the other parties thereto, is a legal, valid and binding agreement, enforceable in accordance with its terms, subject as to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(viii) Lessee does not know of any requirements for recording, filing or depositing this Agreement other than pursuant to Section 11303, Title 49, United States Code, which is necessary to preserve or protect the title or interest of Lessor or its assignee or mortgagee, in the United States of America.

14.2 Upon the request of Lessor or its assignee or mortgagee at any time or times, Lessee shall deliver to Lessor an opinion of its counsel addressed to Lessor or its assignee or mortgagee, in form and substance satisfactory to Lessor or its assignee or mortgagee, which opinion shall confirm and be to the effect of the matters set forth in this Section 14.

Section 15: Inspection and Accident Reports

15.1 Lessor shall at any time during normal business hours have the right to enter Lessee's premises to inspect the Cars and Lessee's records with respect thereto to insure Lessee's compliance with its obligations hereunder.

15.2 Lessee shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Cars including in such report the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident.

Section 16: Overdue Payments

Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Agreement, shall result in the obligation on the part of Lessee to pay also an amount equal to 110% of the prime commercial loan rate in effect on 90-day loans to responsible and substantial borrowers at The Chase Manhattan Bank, N.A. (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from the due date until such overdue sum is paid.

Section 17: Miscellaneous

17.1 This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives. This Agreement and all Schedules constitute the entire agreement of the parties hereto relating to the Cars.

17.2 This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

17.3 If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17.4 In construing any language contained in this Agreement, no reference shall be made and no significance given to any Section titles, such titles being used only for convenience of reference.

17.5 It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Nothing herein shall be construed as conveying to Lessee any right, title or interest in the cars except as a Lessee only.

17.6 No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

17.7 Lessee shall promptly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purpose hereof and to establish and perfect the rights, interests and remedies created, or intended to be created, in favor of Lessor hereby.

17.8 This Agreement shall be governed by and construed according to the laws of the State of Illinois.

17.9. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the President or authorized representative of the other party at the address set forth above.

17.10 Lessor shall provide property damage insurance for the Cars, but reserves the right of subrogation against the responsible parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers, this day and year first written above.

ATTEST:

Sharon L. Schumacher

FUNDING SYSTEMS RAILCARS, INC.,
Lessor

By Earl L. Freeman

Title VP Marketing

ATTEST:

K. B. Helms

BLUE DIAMOND MINING, INC.
Lessee

By Earl B. Helms

Title Executive Vice President

STATE OF ILLINOIS)
 :
COUNTY OF COOK)

On this 19th day of May, 1982, before me personally appeared Earl L. Freeman, to me personally known, who being by me duly sworn, says that he is an authorized officer of FUNDING SYSTEMS RAILCARS, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montagano

Notary Public

My Commission Expires October 24, 1984

(Notarial Seal)

STATE OF--ILLINOIS TENNESSEE)

COUNTY OF Knox)

On this 12th day of May, 1982, before me personally appeared Fred B. Helms, to me personally known, who being by me duly sworn, says that he is an authorized officer of Blue Diamond Mining Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia Walker

Notary Public

(Notarial Seal)

Schedule No. 1

Dated as of March 24, 1982

to Railcar Lease Agreement (the "Agreement") between Funding Systems Railcars, Inc. ("Lessor") and Blue Diamond Mining, Inc. ("Lessee").

The terms used herein shall have the same meaning as such terms in the Agreement.

1. Description of Railcars: Subject to the terms and conditions of the Agreement and this Schedule, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the below described railcars:

<u>CAR NUMBERS</u>	<u>DESCRIPTION</u>	<u>NO. OF CARS</u>
BDMX 170 through BDMX 178, inclusive	1979 N & W built, 3570 cu. ft. 100-ton open top hopper cars	9

2. Delivery Location: Scotia Mine (Scot, Kentucky) on the LN Railroad (Cumberland Division).

3. Commencement Date: May 1, 1982

4. Rental Charge: \$350 per car per month for the first 18 months, \$385 per car per month for the remaining 54 months. $\frac{54}{3}$

5. Term of Lease: Six Years

6. Lessee has the option to add seventy-nine, 1979 N & W built open top hopper cars before September 1, 1982. These additional railcars will be identified on a Schedule No. 2, which will become a part of this Agreement.

7. Purchase Option: At the expiration of this six year lease term, Lessee may purchase these open top hopper cars for \$19,990.00 per car.

8. Excess Mileage Penalty: For each mile in excess of 45,000 that each car covered by this Agreement travels in a calendar year, there will be an additional charge of \$0.02. Excess mileage charges for partial years shall be computed on a pro-rata basis. If the purchase option is exercised at the end of the six year term, the excess mileage penalty will be waived.

BLUE DIAMOND MINING, INC.
"Lessee"

FUNDING SYSTEMS RAILCARS, INC.
"Lessor"

By Scott B. Holma
Title Executive Vice President

By Earl L. Freeman
Title VP Marketing

EXHIBIT A

CERTIFICATE OF ACCEPTANCE OF
RAILROAD CARS

This Certificate relates to the railroad cars listed below leased
by Funding Systems Railcars, Inc. to _____
_____(Lessee) under a Railcar Lease Agreement
for _____ railroad cars dated _____, 19____
into which this Certificate is incorporated.

TYPE OF EQUIPMENT:

PLACE ACCEPTED (RR):

RAILCAR NUMBERS:

Lessee hereby certifies that the railcars listed above were delivered
to and received by Lessee, and inspected; Lessee hereby certifies its
acceptance of the railcars as of _____, 19____.

Executed: _____, 19____.

Lessee

Attest:

BY _____

(Signature)

Name _____

(Print)

BY _____

Title _____